

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

YASHPAL JASWAL and SUKDEV JASWAL,
wife and husband,

NO. C11-01888 RSM

Plaintiffs,
vs.
UNITED STATES of AMERICA,
Defendant.

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS PLAINTIFF
SUKDEV JASWAL

The Court has considered Defendant's Motion to Dismiss Party (Dkt. #9), Plaintiff's Response thereto, the Reply, and the remainder of the record. The Court finds as follows:

Yashpal and Sukdev Jaswal originally filed a medical malpractice action on July 29, 2010 in King County Superior Court. Defendants removed the case to federal court because one of the defendants, Ruth J. Michaelis, M.D., was an employee of the Community Health Center of King County d/b/a Healthpoint, a deemed federal health care facility pursuant to the Federally Supported Health Centers Assistance Act of 1992, 42 U.S.C. § 233(g)-(n). The

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1 United States was substituted as the defendant and, on November 9, 2010, the parties entered
2 into a court-approved stipulation dismissing the case without prejudice for failure to file an
3 administrative tort claim.

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5 On January 10, 2011, Yashpal Jaswal filed an administrative tort claim with the
6 United States Department of Health and Human Services (“HHS”) for personal injuries
7 resulting from the alleged failure to timely diagnose her with ovarian cancer. On that form,
8 Ms. Jaswal identified “Sukdev Jaswal, Husband of Claimant” as a person involved in or
9 witness to the incident. Sukdev Jaswal did not file an administrative tort claim with HHS.
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11 On May 19, 2011, the Department of Health and Human Services made a final
12 determination on the tort claim. On November 9, 2011, both Yashpal and Sukdev Jaswal
13 filed their complaint in this case stating causes of action for medical negligence and loss of a
14 chance for a better outcome. The Jaswals also asked for relief for loss of consortium. Mrs.
15 Jaswal has since passed away.
16

17 The Defendant moves to dismiss Sukdev Jaswal for failing to comply with the
18 administrative exhaustion requirements of the Federal Tort Claims Act (“FTCA”), as set forth
19 at 28 U.S.C. § 2675(a). The FTCA provides, “An action shall not be instituted upon a claim
20 against the United States for money damages for injury or loss of property or personal injury
21 or death caused by the negligent or wrongful act or omission of any employee of the
22 Government while acting within the scope of his office or employment, unless the claimant
23 shall have first presented the claim to the appropriate Federal agency and his claim shall have
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1 been finally denied by the agency in writing and sent by certified or registered mail.” 28
2 U.S.C.A. § 2675(a). When no administrative claim has been filed with the appropriate
3 administrative agency, a district court is without jurisdiction to hear the case and dismissal for
4 lack of subject matter jurisdiction is mandated. *Vacek v. U.S. Postal Serv.*, 447 F.3d 1248,
5 1250 (9th Cir. 2006). The presentation of an administrative claim by a claimant does not
6 relieve the spouse of his or her obligation also to exhaust administrative remedies. *Johnson v.*
7 *United States*, 704 F.2d 1431, 1442 (9th Cir. 1983); *see also Dugan v. United States*, 2008 SL
8 65504 at *1-2 (W.D. Wash. Jan. 4, 2008).

9
10 Here, Mr. Jaswal did not file an administrative tort claim against the United States.
11 He cannot pursue a tort claim in federal district court against the United States without first
12 presenting an administrative claim to the appropriate federal agency and exhausting his
13 administrative remedies. *See Brady v. United States*, 211 F.3d 499, 502 (9th Cir. 2000) (“The
14 requirement of an administrative claim is jurisdictional.”); *Johnson*, 704 F.3d at 1442
15 (upholding dismissal of spouse’s loss of consortium claim because spouse did not file
16 administrative claim and claimant’s form did not identify the spouse as claimant or contain
17 spouse’s signature) .
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20 THEREFORE IT IS ORDERED that Defendant’s Motion to Dismiss Plaintiff’s
21 Complaint is GRANTED. Mr. Jaswal’s claims are hereby dismissed without prejudice to
22 bringing a timely and proper administrative claim for wrongful death. *See* 28 U.S.C. §
23 2401(b) (providing that a tort claim against the United States must be presented to the
24 appropriate federal agency within two years after such claim accrues); *Grant v. Fisher*
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1 *Flouring Mills Co.*, 181 Wash. 576, 44 P.2d 193 (1935) (wrongful death actions accrue “at the
2 time of death”).

3 Dated this 9th day of August 2012.

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6 
7 RICARDO S. MARTINEZ
8 UNITED STATES DISTRICT JUDGE

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